

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

December 10, 2004

Elihu M. Harris State Building

Oakland, California

In Attendance:

Chair Tom Rankin

Commissioners Allen Davenport, Robert B. Steinberg, Darrel "Shorty" Thacker,

John C. Wilson

Executive Officer Christine Baker

Not in Attendance

Commissioners Leonard C. McLeod, Alfonso Salazar, and Kristen Schwenkmeyer

Call to Order / Minutes from the November 15, 2004, Meeting

Chairman Tom Rankin called the meeting to order at 10:00 a.m. and asked for a motion on the draft minutes of the November 15, 2004, CHSWC meeting.

CHSWC Vote

Commissioner Thacker moved to approve the minutes of the November 15, 2004, meeting, Commissioner Wilson seconded, and the motion passed unanimously.

Executive Officer Report

Christine Baker, Executive Officer

Christine Baker presented the Executive Officer Report. She stated that Senator Richard Alarcón requested that CHSWC provide a background document on the research regarding PD benefits and that a thorough study would be required to determine the full scope of the proposed changes. Judge Lach Taylor, in collaboration with other CHSWC staff, has developed a draft issue paper on PD benefits. CHSWC's approval would be needed to make the draft issue paper public.

Ms. Baker further commented that CHSWC is looking at the impact of apportionment as presented in a study by legal consultant Larry Swezey and Judge Lach Taylor. CHSWC would potentially initiate a study of apportionment to be led by Judge Taylor that would look at cases in the district offices.

Appreciation for Retiring Chair Tom Rankin

Ms. Baker then presented retiring Chairman Tom Rankin with a framed Certificate of Appreciation for his service since CHSWC's inception in 1994. She thanked Chairman Rankin for leading CHSWC in serving both labor and employers and giving the

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

Commissioner the independence needed to ensure fair and appropriate changes to the workers' compensation system. Ms. Baker stated that she has been honored to serve under Mr. Rankin and that he had consistently supported the cause of workers' compensation with a thoughtful, analytical and ethical perspective. Ms. Baker also stated that CHSWC would not exist except for Chairman Rankin's conviction and direction.

Commissioner Wilson commented from the employer side that although they had not always agreed, he wanted to express his appreciation for the excellent job Chairman Rankin had done chairing CHSWC. He stated that it was a pleasure working with Chairman Rankin.

Commissioner Davenport commented that he would like everyone to know that the creation of CHSWC was largely the result of Chairman Rankin's work with employers to create consensus with labor. Commissioner Davenport stated that Chairman Rankin had been a guiding light, consistently bringing an intellectual bearing on the issues.

Chairman Rankin thanked everyone for their comments. He commented that workers' compensation has been a big part of his life since about 1983 and that he will continue to be involved with the California Labor Federation to work on implementation of Senate Bill (SB) 899 as intended, so that it will benefit both labor and employers.

Policy Considerations for Permanent Disability Rating Under AMA

Judge Lach Taylor, Workers' Compensation Judge, CHSWC

Judge Taylor presented an overview of the draft Permanent Disability Rating Schedule (PDRS) issue paper. Revisions of Labor Code Section 4660 were made by SB 899, which based disability evaluations on the American Medical Association (AMA) Guides and introduced an adjustment factor for future earning capacity. Judge Taylor stated that use of the AMA Guides does not necessarily imply a reduction in disability ratings, even though the number of AMA impairments is usually lower than the ratings in the existing disability rating schedule. Judge Taylor commented that when the legislature has intended to change ratings, it has clearly specified that. The intention SB 899 appears to be to use the AMA Guides to make more precise, objective, and reliable permanent evaluations, using the adjustment factor for diminished future earning capacity to achieve approximately the same compensation amounts as the existing schedule.

Commissioner Steinberg asked if it were not the case that we are left with the language of the statute and no indication of intent.

Judge Taylor responded that the legislation does not tell the administrative director (AD) of the Division of Workers' Compensation (DWC) how to formulate the rating schedule, and it does not indicate that benefit levels should be changed. He added that in his

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

opinion, the statute could not be interpreted without context in order to determine legislative intent.

Chairman Rankin suggested that the draft issue paper on the Permanent Disability Rating Schedule be distributed for public comment and that CHSWC discuss it at the next meeting.

Commissioner Wilson stated that he has already received some letters of comment and that some people were planning to make comments at this meeting. He stated that he would provide the letters with comments to CHSWC staff and stated that he would prefer to hear the public comments today before discussing the issue at the next meeting.

Public Comment

Bill Zachry, Vice President of Corporate Workers' Compensation, Safeway, and Chair of the California Fraud Assessment Commission, stated that the AD has done an excellent job in moving the PD system in the right direction. The concern is that the legislation does not indicate that monetary compensation for the existing schedule equals compensation from the proposed schedule. He further stated that the goal of the legislation is that the schedule be consistent, reliable and objective.

Chairman Rankin stated that you can have a consistent, reliable, and objective schedule, but the key point is whether such a schedule results in a decrease or increase in benefits or is cost neutral. He stated that his concern is that injured workers would not be under-compensated as a result of the new legislation and that that he believed it was not the intent of Governor Arnold Schwarzenegger to reduce benefits.

Mr. Zachry stated that his understanding of the intention of the workers' compensation system is that those who are truly disabled and truly injured on the job and have had an income impact would be reimbursed. Chairman Rankin stated that that is why the Legislature said that the AMA Guides had to be tied to the wage loss.

Mr. Zachry stated that the PD study by RAND did not include the calculation of the impact of Assembly Bill (AB) 749 in the analysis of the potential wage loss. Chairman Rankin replied that he thinks that RAND's analysis was prior to AB 749, but that does not mean that the wage loss analysis does not apply.

Mr. Zachry stated that there is some question of the absolute validity of the RAND study if it did not calculate in the significant increases in the temporary disability that were applied. Chairman Rankin responded that the legislature referred to the use of the RAND study so the AD should use the RAND study in the adoption of the PD schedule, if there are no other empirical studies, unless she wants to conduct a crosswalk study before adoption of the PD schedule, as some people have suggested. Chairman Rankin stated that the AD has apparently chosen not to do that.

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

Mr. Zachry commented that it is presumed that the AD has chosen not to take into account the issues of the RAND study because of the factors she used in the multipliers for the loss of earning capacity. He further stated that it is his understanding of the legislation, as well as the workers' compensation process, that it was intended to drive a more aggressive return-to-work (RTW) process by the use of an increase in PD if the employer provides or offers permanent or modified positions and a decrease in PD if the employer does not provide or offer permanent or modified jobs.

Chairman Rankin agreed that the legislation provided for a 15 percent decrease if the worker was returned to work and a 15 percent increase if the worker was not provided return to work, creating a 30 percent differential that is consistent with RAND study findings in terms of difference of wage loss between workers who return to work and those who do not return to work.

Mr. Zachry stated that one of the reasons the PD system was changed so dramatically was because there was so much abuse with regard to subjective complaints. Chairman Rankin stated that the AMA Guides were adopted to solve this.

Mr. Zachry then stated that if that were the case, you would see a difference in the payment of PD over time because of the expected elimination of some of the PD paid under the old system that would not be in the new system. Chairman Rankin responded that apparently whatever multiplier the AD chooses, there will be a number of disabilities that get a zero rating.

Mr. Zachry commented that Safeway has many employees who have returned to work without any wage loss and are performing their full function, yet they receive extensive permanent disability (PD) benefits. He stated that it is difficult to justify expectation that there is going to be an exact crosswalk of dollars between the old system and the new system.

Chairman Rankin asked Mr. Zachry if he thought the goal of the new system is to reduce compensation for a seriously injured worker. Mr. Zachry replied that the goal of the new system is to encourage RTW and that seriously injured workers will get more money.

Chairman Rankin asked Mr. Zachry if he had looked at the AD's proposal and cases of seriously injured workers and if so, did he believe there would be drastic reduction in benefits in that proposal. Mr. Zachry replied that he has looked at some cases of carpal tunnel syndrome where the injured workers had come back to work on full duty and were awarded 50 or 60 percent PD. These workers would not be receiving that kind of compensation under the proposed system.

Chairman Rankin stated that he does not think that the average rating for carpal tunnel syndrome is near the figures Mr. Zachry cited. Mr. Zachry responded that Safeway has

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

many cases exceeding that rating, and that this situation raises questions about what a severe injury is.

Chairman Rankin described the case of his wife whose workers' compensation claim was denied. He stated that more money was spent denying the claim than would have been spent giving her several physical therapy treatments.

Mr. Zachry responded he agrees that the quality of claims adjusting in California needs to improve and that he would work with Chairman Rankin to improve the overall quality of medical care and benefits that are given to injured workers. He further stated that providing the right care initially following an injury significantly reduces PD. He stated that if you look at the statistics of severe injuries, such as a back surgery for laminectomy. There is a good recovery rate with group health, while in the workers' compensation system the rate of recovery is poor.

Chairman Rankin stated that he is in favor of a single medical system, but we are apparently a long way from having such a system, since employers are still objecting to providing health benefits for workers in general and they are spending a lot of money trying to make employees pay more for their health benefits.

Commissioner Steinberg stated that the issue now is whether the AD is giving "full force and effect" to the RAND studies and the statute as we read it. In addition, he stated that Mr. Zachry is arguing that nothing in the statute says the schedule should be adopted at a cost-neutral level, while Chairman Rankin says that those negotiating SB 899 intended it would be so. Commissioner Steinberg further commented that CHSWC hired RAND to analyze the PD issue and the legislature saw fit to incorporate RAND's research into the legislation.

Mr. Zachry stated that he believes that the AD has contemplated the use of the RAND study but was not sure what "full force and effect" is.

Commissioner Wilson stated that it is not CHSWC's position to speculate on legislative intent. He further stated that there is a need to evaluate the new PD system in comparison to the old system and what the cost savings would be from adopting the new system.

Willie Washington, of the California Manufacturers' Technology Association, stated that he was part of the negotiations and early discussions on PD and that it was not the intent to limit benefits to severely injured workers but to bring predictability and reliability to a system that was not functioning well. Some changes in ratings were expected to occur although it was not known to what extent. He further commented that he had not seen a cross-comparison study of ratings for all types of injuries to see where the disparities lie. Some PD ratings were subjective and speculative and had no objective foundation, so the workers' compensation community should expect different ratings from an objective system. He stated that everyone involved in the legislative discussions knew that there

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

had to be reductions and the goal was not to be neutral. They also knew that those in the lower rating would be affected, and they knew that employers would be affected at the high end. He stated that he believed that by changing to use of the AMA Guides, there would be a reduction in the amount of PD.

Chairman Rankin asked Mr. Washington what the basis was for the AD's proposed range for the adjustment factor of 1.1 to 1.4, given all the possibilities for an adjustment factor that she could have chosen. He stated that the current proposed adjustments result in large decreases for injured workers.

Mr. Washington stated that his best guess as to the AD's choice of adjustment factor is because the 5th edition of the AMA Guides was adopted and there is not a lot of experience with the 5th edition. Many other states use the 4th edition, which does not deal with pain injuries or with psychiatric injuries. This is similar to the changes that were implemented with the fee schedule with the introduction of modifiers.

Chairman Rankin stated that the AD's choice of modifier appears to be arbitrary, but that whatever modifier the AD adopts, all the injuries under AMA that are not ratable and not considered impairments or disabilities will get nothing, and this will result in a reduction in benefits.

Mr. Washington stated that he hopes that by the time CHSWC gets comments on this paper, we will have a better balance and that there will be clearer communication with the AD to better understand her direction on this issue.

Mr. Rankin commented that the CHSWC paper does not say that we can not have zero ratings; it does not even deal with that question. In the end, the AD has to make the judgment on the PD schedule within the confines of the statutory language. He stated that he hopes this judgment will prevent a lot of litigation; litigation would not be avoided with the proposed schedule the AD has adopted to date. The statute does not contemplate an arbitrary system. That is why the AMA Guides were tied to the wage loss to ensure that injured workers were compensated adequately.

Mr. Washington agreed that litigation should be avoided. He further stated that he believes that the AD was motivated by trying to balance the situation by using the 5th edition of the AMA Guides.

Chairman Rankin commented that part of the problem is the rush to adopt a rating schedule by the January 1, 2005, statutory deadline. He further commented that insurance rates effective January 1, 2005, are not based on this change. The AD believes she has to meet this deadline, although she allowed the December 1, 2005, medical utilization schedule deadline to pass.

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

Art Azevedo, Legislative Chair of the California Applicants Attorneys Association (CAAA), agreed with Tom Rankin's last comment but stated that reform by chaos is probably not going to help injured workers or employers. He further stated that the AD's proposal would probably constitute a 70 percent reduction in benefits. The AMA Guides define objective impairments, so a lot of subjective cases, such as pain and headache cases and post-traumatic brain injuries, would no longer be considered. Mr. Azevedo commented that CHSWC staff has pointed out some modest examples of differences in ratings between the existing schedule and the proposed schedule. He also stated that the potential political backlash could be devastating to all members of the workers' compensation system. In addition, he commented that data is important for the adoption of the PD schedule and that CAAA has commissioned a more broad-based study. Mr. Azevedo then introduced Mark Gerlach who assists CAAA with economic issues.

Mark Gerlach stated that at the Senate Labor and Industrial Relations hearing, the AD commented that she does not know what effects the proposed changes to the PD schedule would have but that they would increase some benefits and decrease others. Mr. Gerlach commented that this affects both labor and employers, because labor is concerned about injured workers and employers are concerned about insurance rates. The Workers' Compensation Insurance Rating Bureau of California (WCIRB) has not advised and the Insurance Commissioner has not made any adjustment to insurance rates to anticipate the effect of the proposed changes.

Mr. Gerlach stated that at a past CHSWC meeting, RAND proposed doing short-, intermediate-, and long-term studies to help with the adoption the PD schedule. He further stated that when CAAA found out that the AD was not going to conduct any studies but wait for data to come in, CAAA commissioned a study that encompassed injuries that account for more than half the indemnity dollars in the workers' compensation system. The results of the study show that going to a new system based on the AMA Guides would cause a decrease in ratings by two-thirds.

Mr. Gerlach also spoke about the data for the PD schedule that the statute specified should be used. He emphasized that the proposed adjustment factors of 1.1.-1.4 are based on a policy decision, while the statute calls for rates to be based on empirical data from the RAND study. RAND's data defines the relativities between types of injuries. RAND said that the current data do not accurately reflect wage loss and need to be adjusted. RAND also pointed out that in order to get data necessary to make appropriate adjustments, a crosswalk needs to be done. Mr. Gerlach further stated that the RAND study indicates that current disability benefits are not adequate. He commented that there is no justification for saying that benefits will be reduced on an overall basis. That is where the justification is for saying that the schedule has to be at least cost-neutral. Mr. Gerlach also stated that the data need to be adjusted so that we can look at wage loss in comparison to the AMA Guides and that can not be done without a crosswalk study. If the AD wants to put a schedule in place by January 1, 2005, he stated that he believes it

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

has to include conversion factor of at least 3.0 so that there is a cost-neutral benefit effect on the system.

Commissioner Steinberg asked if Mr. Gerlach was suggesting that as an interim measure pending the results of further studies, the AD should adopt an adjustment factor of 3.0 instead of the proposed 1.1.-1.4.

Mr. Gerlach responded that that would be an interim step that would at least provide a cost-neutral adjustment to the benefits, while still basing them on the AMA Guides. He further commented that CAAA conducted a study that covers a range of cases and shows that 3.0 would be an accurate conversion factor based on available empirical data.

Commissioner Steinberg stated that the choice of 3.0 as an adjustment factor reflects the same databases as what the AD has suggested.

Mr. Gerlach stated that he believes that the data is valid, and that 3.0 would be an accurate conversion factor. He again emphasized that the study conducted by CAAA covers the majority of injuries. Professor Leigh, who did the study, can make the data available to everyone, including the AD, RAND, and CHSWC.

Commissioner Steinberg stated that CHSWC only has a consulting role and can not make the AD adopt a different schedule. Mr. Gerlach agreed that CHSWC's role is that of an oversight body looking at the workers' compensation system. The decision is in the hands of the AD but the AD is bound by the statutory language.

Commissioner Steinberg asked if there are any alternatives, other than adopting another factor that has not been thoroughly vetted through empirical studies. Chairman Rankin had suggested postponing the January 1, 2005, deadline for adopting the schedule. He asked Mr. Gerlach if that is an alternative.

Mr. Gerlach responded that CAAA does not believe that adoption as presently drafted would satisfy the statute. The AD would have the option of waiting until she has the data to create a schedule that complies with the statutory requirement. He further stated that RAND made a proposal in the May CHSWC meeting to get the data necessary to establish the PD schedule, and CHSWC adopted this proposal. The AD's testimony at the recent Senate hearing was that she intends to wait until data is available, hopefully within six to nine months after the schedule goes into effect. Mr. Gerlach stated that he believed it would be five to ten years to obtain the necessary data to estimate what the wage loss impact is going to be for injured workers and that he hoped that the incentives will include RTW. We do not yet know the long-term effect of the RTW adjustment on workers with PD, as this is not a short-term disability. He stated that he believes that waiting five to ten years is untenable, and the effects need to be determined now. If there are going to be reductions in weeks of disability benefits, employers should see those savings, so it is important to find out the effects as soon as possible.

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

Commissioner Wilson asked who Professor Leigh is. Mr. Gerlach responded that he is a professor at the University of California Davis who conducted an independent study of what the differences in rating would be between using the AMA Guides and the current PD Rating Schedule.

Mr. Gerlach stated that CAAA provided copies of the study to CHSWC staff.

Susan Guyanne, Director of Employee Benefits for Costco Wholesale and the incoming chair for California Coalition of Workers' Comp (CCWC), stated that like Mr. Zachry and Mr. Washington, she believes it is essential that the new system be predictable and reliable. She further stated that the change from a subjective to an objective system means that we can expect a cost-neutral outcome across the board. She commented that based on Costco's review, the CAAA study is not valid. She stated that California is an important state to Costco, and the company wants to make sure that employees are taken care of. With a subjective PD system, a number of employees have come back to work with outrageous awards based on subjective complaints. PD does tie in to RTW. When we bring people back to work, they are producing and earning their livelihood and that does seem to mean that there is fair compensation. If there is an objective loss, then they should receive PD for that. She emphasized the importance of SB 899 broadening the PD schedule to incorporate a RTW incentive.

Chairman Rankin stated that there is no question of cost neutrality because the AMA Guides will eliminate an unknown number of claims. Everyone accepts that. He further stated that we are not talking about cost neutrality relative to the present system; we are talking about cost neutrality for those injuries that remain, excluding the subjective injuries that will be eliminated by the AMA Guides. The costs to the system could be considerably reduced by the elimination of injuries that will receive a zero rating.

Chairman Rankin stated that the concern is with the injuries that are left, not with trying to keep the same dollar amount in the system. If the statute is carried out right, it will result in some injuries being compensated more and some less, and over time, it will be adjusted to reflect new empirical data which, if RTW is successful, will result in lower wage losses in some categories.

Ms. Guaynne asked if Chairman Rankin's concern is about the injuries that were not fairly compensated according to RAND. Chairman Rankin responded that the RAND study showed that a lot of injuries were not receiving adequate compensation. The standard of adequacy is two-thirds wage replacement. Then we have to look at the data for each injury and see what the wage loss was and measure that against the standard. He stated that the AD has not done that and he does not know how that can be done by January 1, 2005.

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

Ms. Guyanne stated that it is important to see how the 15 percent-tiered benefit system with regard to RTW affects PD benefits.

Chairman Rankin agreed with Ms. Guyanne's statement that the ultimate goal is RTW. He stated that CHSWC has an obligation under its mission to study the results of the schedule which will be adopted.

CHSWC Vote

Commissioner Steinberg moved to distribute the draft paper that was requested by Senator Alarcón on the Permanent Disability Rating Schedule for public comment, and Commissioner Thacker seconded. The motion passed unanimously.

Proposal to Evaluate Impact of Permanent Disability on Benefits and Costs

Frank Neuhauser, Survey Research Center, University of California, Berkeley
David Bellusci, Workers' Compensation Insurance Rating Bureau of California

Ms. Baker introduced Frank Neuhauser from the University of California Berkeley Survey Research Center and David Bellusci, WCIRB Senior Vice President and Chief Actuary to present the proposed study.

Mr. Neuhauser first stated that it was a pleasure to work with Chairman Rankin over the past ten years. Mr. Neuhauser commented that the research community regards CHSWC as the leading non-partisan research body on workers' compensation in the country. Credit goes to Chairman Rankin and the other Commissioners for this recognition.

Mr. Neuhauser stated that he had been asked by CHSWC and Ms. Baker to put together a proposal for early evaluation of the impact of the PD rating schedule changes, both for effects on workers and for effects on premiums. He commented that there are important reasons for doing an early study. First, premiums are set on regular basis, and there will probably be a mid-year premium adjustment. The Insurance Commissioner needs to have information on the impact of the schedule in order to adequately set premium rates, so that any savings from SB 899 would be passed on to the employers. Second, there may be negative impacts of the changes as a result of the new schedule on injured workers.

Mr. Neuhauser stated that the proposal for CHSWC essentially looks at four approaches to evaluating the PD schedule in the short-term with an objective of affecting premium changes and giving early feedback to the community. He summarized the four approaches: (1) map the current schedule to the AMA Guides; (2) analyze as early as possible the actual ratings that come through the Disability Evaluation Unit (DEU) in the first 30 to 60 to 90 days to pick up actual implementation issues and how those are interpreted by doctors and lawyers and the DEU; (3) develop a crosswalk on psychiatric evaluations; (4) propose to re-evaluate replacement rates in light of RTW adjustments. In

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

addition, Mr. Neuhauser stated that the issue of apportionment should be studied to see how it affects the amount of PD.

Mr. Bellusci made a few comments as to how the WCIRB is proceeding to evaluate the PD schedule. He stated that prior to SB 899, PD was about 22 percent of total cost, or \$4.5 billion. With SB 899, the estimates reflected in the approved January 1, 2005, premium rates assume a 10 percent reduction caused by apportionment, which is a permanent reduction because of changes in number of weeks, and a reduction from the two-tier system for RTW reflects another 10 percent reduction. A 20 percent reduction in PD benefits has already been contemplated for these reasons prior to taking into account the new PD schedule. In addition, he commented that the schedule changes are going to be difficult to evaluate; they are very subjective changes and will depend on how doctors apply the schedule, how judges rule disputes, and how the schedule stands up to legal challenges. It will take two to three years for a good estimate of the impact of the new schedule. They have tried to put together a method for early evaluation.

Mr. Bellusci stated that the WCIRB is concerned with evaluating the cost impact of the new schedule and has retained Dr. Chris Brigham, an AMA expert. It has also formed a panel of professionals that includes representatives from insurers, CHSWC, and CWCI, and Mr. Neuhauser to determine the best approach to evaluation of the impact.

Mr. Bellusci then summarized the approaches the WCIRB is looking at. Two key cost issues are: (1) the claims that are compensable for PD in one PD system and not in the other; and (2) the average change in ratings that are PD-compensable in both PD systems. He stated that the WCIRB is interested in pursuing on a joint basis with CHSWC a couple of the approaches that Mr. Neuhauser discussed that include: (1) a comparison of current ratings to likely ratings under AMA, which would be a hypothetical look at how ratings might change; and (2) a comparison to actual ratings that come out of the system.

In addition, the WCIRB would also like to do interstate comparisons for claims that may not get a rating under AMA, which did get a rating under AMA system. He stated that the WCIRB is also interested in looking at actual medical reports written under the California system and trying to rate them per the AMA Guides.

Mr. Bellusci remarked that all of the approaches have some data limitations. He commented that assuming that a schedule is in place near January 1, 2005, the WCIRB is hoping to have studies completed in late March to be part of the rate filing process for a July 1, 2005 pure premium rate filing.

Commissioner Wilson asked if the outline submitted covers the total cost of the project. Mr. Bellusci explained that for the first two items of the proposal, the WCIRB would be paying half and CHSWC would be paying half.

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

Commissioner Wilson asked if we are laying the foundation for an ongoing process with this proposal. Mr. Bellusci replied that he thinks so, in particular with the study of actual ratings coming out of the DEU, since the information will become more meaningful with time and as more claims are being rated under the new schedule.

Mr. Neuhauser commented that some parts of the proposal are longer-term and might extend over two fiscal years.

Commissioner Steinberg commented that he was concerned about the value of the study at the present time when there are serious issues of interpretation of PD and apportionment changes. He stated that there could be a lot of litigation as a result of rating changes and that the value of data based on early ratings was questionable.

Mr. Neuhauser replied that assuming that we go forward with the proposal, in the short-term, there would still be premiums set on that. In the medium-term, the litigation would partly surround what the actual effect of the schedule is.

Mr. Bellusci stated that with these studies, there will at least be information to frame some estimates and make some assumptions about the impact of the new schedule.

Ms. Baker stated that there is a lot of speculation about the zero ratings and this would give us an early indication of which cases are not getting rates.

CHSWC Vote

Commissioner Thacker moved to adopt the proposal for studies, Commissioner Davenport seconded, and Commissioner Steinberg abstained. Commissioner Steinberg then changed his vote to "aye," and the motion passed unanimously.

Commissioner Steinberg questioned where the real reductions in insurance premiums were coming from and asked the Commission to study this issue. He also asked where the rate changes were coming from and then asked Mr. Bellusci if he had anything to suggest regarding further study of this issue.

Mr. Bellusci stated that there are significant pure premium rate reductions from the proposed WCIRB rates, as well as the Insurance Commissioner's rates. In the market, there was about 10 percent reduction from the rates in the first half of 2004 compared to the second half of 2003, or before the reforms.

Mr. Neuhauser suggested that there is information on this that could be gathered by CHSWC staff from bureaus that operate much like the WCIRB for other lines of insurance.

Chairman Rankin proposed that the discussion of apportionment be postponed until the next CHSWC meeting.

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

CHSWC Vote

Commissioner Wilson moved that the apportionment paper be circulated for public comment, and Commissioner Steinberg seconded. The motion passed unanimously.

Chairman Rankin stated that an area for future study is claim frequency that continues to go down, though no one understands why. It would be valuable to determine what is driving this reduction in claim frequency.

Public Comment

Peter Mateo, a heavy duty diesel mechanic with the city of San Jose, stated that he was injured on the job. Although he has settled his claim, he is now being denied benefits. He stated that his employer referred him to the carrier, but the carrier denied the gym membership that his doctor prescribed that has helped keep him working the past five years.

Commissioner Wilson stated that testimony at the last CHSWC meeting focused on denial of benefits of those procedures not covered in the ACOEM guidelines, and that this is not appropriate grounds for denial. He further commented that if the doctor has written the documentation, it becomes a matter for enforcement through a Workers' Compensation Appeals Board (WCAB) hearing.

Chairman Rankin stated that CHSWC had testimony at the last meeting from a bus driver who could work with acupuncture treatment but could not work on pain medication. He emphasized that the goal is RTW.

Mr. Zachry stated that as chair of the Fraud Commission, he requests that CHSWC assist with research on issues of fraud, particularly in Los Angeles area, which is the hotbed of fraud in the United States, as well as in California. He commented that the Fraud Commission has no funding for research. He further commented that there is fraud regarding outpatient surgery centers and that at least 20 of these centers in Los Angeles are defrauding patients in group health and workers' compensation. He further commented that the Fraud Commission is concerned that many employers who have large deductibles are not paying their fair share into the Fraud Commission, as well as CIGA and other organizations. They are also concerned about the dual classification system in construction, because it forces employers to lie about their classifications for their employees in order to survive. Repackaging of pharmaceuticals in outpatient surgery centers and other providers is another concern, as is medical provider networks extorting money from physicians to join their networks as well as extorting an expected percentage to stay in the networks. In order to help fight fraud in California, the Fraud Commission is asking the DWC to change the HICFA 1500 and UB-92 billing forms to provide the Commission with better information on ownership and location of medical provision. Mr. Zachry then concluded by mentioning another area of concern, the

Commission on Health and Safety and Workers' Compensation
MINUTES OF MEETING
December 10, 2004 Elihu M. Harris State Building Oakland, California

limitation of 24 physical therapy visits in relation to the claims adjuster community providing the right kind of care to injured workers.

Chairman Rankin stated that he would like to refer this matter to Ms. Baker to work with Mr. Zachry and the DOI to come up with a proposal on anti-fraud issues.

Chairman Rankin stated that dual classification is based on the recognition that the union sector or any employer which pays higher wages has a safer workplace, fewer accidents and a lower workers' compensation rate. He further stated that the non-union sector, particularly in construction, is a hotbed of the underground economy, and it is not surprising that this sector commits fraud in workers' compensation. He emphasized that this is not because of the dual classification system but because of the culture of that industry.

Commissioner Davenport agreed that there is definitely fraud in the areas mentioned and that it would be worth looking into this issue.

Adjournment

The meeting was adjourned at 12:00 p.m. The next CHSWC meeting is scheduled for Thursday, February 24, 2005, in Oakland.

Approved:

Respectfully submitted,

John C. Wilson, Chair

Date

Christine Baker, Executive Officer

Date